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Information presented to the Commission during
the 4-17-13 LAFCO hearing.

Legal Digest: Two LAFCO Rulings Reveal Importance of Commissions

By William Fulton on 4 December 2012 - 6:49am

While perhaps not surprising news to LAFCO wonks like Peter Detwiler, two recent decisions illustrate the special role that local agency formation commissions play in influencing local government and special district activities.

The first decision, *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission* (October 5, 2012, G045878) ___ Cal.App.4th ___, wrestles with the intersection of Proposition 218 voting requirements with LAFCO's ability to order island annexations. (Government Code section 56375.3) Originally developed in 1904, Sunset Beach is a small, unincorporated enclave located adjacent to Huntington Beach. Confined to less than 134 acres, Sunset Beach is home to roughly 1200 permanent residents. As authorized by the Government Code, Orange County LAFCO ("OC LAFCO"), upon review of the location, size and status of Sunset Beach, concluded that the area met the qualification for an island annexation, and ordered it annexed to Huntington Beach.

At the time, existing property owners within the city limits of Huntington Beach paid two taxes that their adjacent neighbors in Sunset Beach did not pay: a five percent utility tax and a pre-Proposition 13 retirement property tax. LAFCO's approval of the island annexation thus triggered the following question: Did Proposition 218 give the Sunset Beach voters the right to vote on the taxes as a condition to the annexation going forward. Voters within Sunset Beach filed suit.

The trial court decided that 218 voting requirements did not extend to LAFCO-compelled island annexations completed under the authority of Government Code section 56375.3. The appellate court reached the same conclusion. In so deciding, the appellate court reviewed the history to voter enacted tax reform starting with Proposition 13 (1978). The appellate court reasoned that had the voters intended to apply the vote requirement to the then existing-statutory scheme which authorized island annexations, the voters would have drafted the measure to expressly do so. Failing the ability to find that legislative objective in Proposition 218, the appellate court declined to read the proposition in a manner to reach a result not reasonably read into the adopted text.

The second case, although primarily a CEQA decision, also illustrates LAFCO's potential range. In *Voices for Rural Living v. El Dorado Irrigation District*, (October 4, 2012, C064280) ___ Cal.App.4th ___, affected parties filed suit, challenging El Dorado Irrigation District's ("EID") approval of a Memorandum of Understanding (MOU) with a tribe, the effect of which was to increase the amount of water delivered by EID to the tribe for a casino operation. In 1989, the County LAFCO had approved an annexation request by EID to serve the tribal property. LAFCO imposed a condition which limited the water service for residential purposes and accessory uses, serving not more than 40 residential lots. Neither the tribe nor LAFCO ever challenged the validity of the limitation. A little more than ten years later, a casino was proposed for the property. This casino in turn necessitated the increase in water deliveries as well as construction of an on off ramp on Highway 50. The affected agencies prepared the required NEPA and CEQA documents.

The water limitation proved problematic, and eventually EID become convinced that the LAFCO restriction was an improper limitation on EID serving a sovereign nation. EID then entered into the MOU with the tribe providing for water deliveries substantially in excess of those authorized under the LAFCO condition. Adjacent owners filed suit, alleging CEQA grounds along with the violation of the LAFCO restriction. The appellate court concluded that EID lacked the authority to unilaterally void the LAFCO limitation even in circumstances in which it thought the limitation was unconstitutional. This authority rests with the LAFCO or courts, not the agency charged with implementing the restrictions previously imposed. The appropriate

course of action for EID was to go back to LAFCO (as it expressly had retained jurisdiction) and file a request for an amendment. In circumstances in which the LAFCO declined the amendment request, EID could then seek judicial review.

LAFCOs are not exactly the new sheriff in town; they have been broadly empowered for decades. As these agencies become more confident in their independence and legal authority, expect them to take a seat at the table where important decisions are made regarding community growth and municipal organization.

Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission (October 5, 2012, G045878) ____ Cal.App.4th ____

Voices for Rural Living v. El Dorado Irrigation District, (October 4, 2012, C064280) ____ Cal.App.4th ____

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Submitted by gc7an07tz (not verified) on 13 December 2012 - 3:27pm.

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